

Filed 4/18/19 The Sierra Club v. Cal. Coastal Com. CA2/3
(Unmodified opinion attached)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE SIERRA CLUB,

Plaintiff and Appellant,

v.

CALIFORNIA COASTAL
COMMISSION,

Defendant and Respondent;

MULRYAN PROPERTIES, LLLP,
et al.,

Real Parties in Interest and
Respondents.

B283652

(Los Angeles County
Super. Ct. No. BS160383)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion, filed herein on March 21,
2019, be modified as follows:

1. On page 3, line 3 of the second full paragraph, “§§ 3000” is changed to “§ 30000.”
2. On page 3, line 4 of the second full paragraph, “§§ 31000” is changed to “§ 21000.”
3. On page 7, delete the first sentence of the first full paragraph and replace it with the following: “Only the local coastal plan of the MLCP had been adopted by the County of Los Angeles in 1986 pursuant to the Coastal Act, which authorized and encouraged local agencies to enact their own local coastal programs.”
4. On page 9, line 5 of the final paragraph, replace “polices” with the word “policies.”
5. On page 12, line 2 of the first full paragraph, replace “higher” with the word “highest.”
6. On page 13, line 9, replace “impact” with the word “impacts.”
7. On page 14, line 5, delete the closing quotation mark after “dangerous. . . .” so that the final two sentences of the paragraph read: Its letter contained the observation that “expect[ing] fire fighters to travel a 3,674 ft. long road . . . is unrealistic and dangerous. . . . This presents unacceptable risks to firefighters and residents.”
8. On page 18, line 12, replace “impact” and with the word “impacts.”
9. On page 19, line 3, insert a closing quotation mark following the comma.
10. On page 22, line 4 of the second full paragraph, delete the opening quotation mark before the word “not.”
11. On page 23, line 2, replace “60801” with the number “68081.”

12. On page 30, line 1 of the second full paragraph, delete the word “that.”

13. On page 38, line 3, enclose the word “certified” in single quotation marks, so that the final word in the sentence reads: ‘certified.’”

There is no change in the judgment.

The petition for rehearing filed by real parties in interest Lunch Properties LLLP, Morleigh Properties, LLLP, Mulryan Properties, LLLP, Ronan Properties, LLLP, Vera Properties, LLLP, and ED West Coast Properties, LLLP, is denied.

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EDMON, P. J.

LAVIN, J.

GOODMAN, J.*

* Retired judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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(Los Angeles County
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APPEAL from a judgment of the Superior Court of
Los Angeles County. James C. Chalfant, Judge. Reversed with
directions.

Advocates for the Environment, Dean Wallraff and
Kathleen R. Unger for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Daniel A. Olivas,
Assistant Attorney General, Jamee Jordan Patterson, Deputy
Attorney General, for Defendant and Respondent.

Cox, Castle & Nicholson, Stanley W. Lamport and Kurt G.
Whitman for Real Parties in Interest and Respondents.

INTRODUCTION

The Sierra Club (Sierra Club), an environmental advocacy group, filed a verified petition for writ of mandate seeking an order from the Los Angeles Superior Court that the California Coastal Commission (Commission) set aside its December 2015 approvals of coastal development permits (CDPs) for the construction of five residences in and adjacent to a sensitive environmental resources area (SERA) located in proximity to a significant mountain ridgeline in the undeveloped “Sweetwater Mesa” area within the Santa Monica mountains, and for construction of an access road and other infrastructure.

The trial court denied the petition, ruling Commission had properly applied provisions of the California Coastal Act (Pub. Resources Code, §§ 3000 et seq.; Coastal Act) and the California Environmental Quality Act (Pub. Resources Code, §§ 31000, et seq.; CEQA)² and had not abused its discretion in its application of the takings clause of the Fifth Amendment to the United States Constitution and of its state constitutional and statutory parallel provisions (U.S. Const., 5th Amend.; Cal. Const., art. I, § 19).

Sierra Club filed a timely appeal, in which it challenges multiple aspects of the procedures used by Commission in its review and consideration at its December 2015 meeting of revised CDP applications filed by real parties in interest (RPIs), as well

² Further undesignated statutory references will be to the Public Resources Code in which both the Coastal Act and the California Environmental Quality Act are set out.

as Commission's ultimate determination to issue those applications.³

Determining Commission no longer had jurisdiction to do so at the time it considered and granted RPIs' applications for CDPs, we reverse the judgment.

FACTUAL AND PROCEDURAL BACKGROUND⁴

The Santa Monica Mountains (the range) dominate the landscape adjacent to the city of Malibu. A large portion of the range lies within the Malibu Coastal Zone which extends approximately 27 miles from the Ventura County Line on the west to the Los Angeles City limits on the east. From the sea, the Malibu Coastal Zone extends inland approximately five miles, and includes the coastal slopes, ridgelines, canyons and valleys of the range. The area is characterized by variations in its topography—a coastal plateau and shoreline and mountain ridges rising from steep canyons (over 80 percent of the land contains slopes of 25 percent or steeper); areas of exclusively native and endangered species of vegetation and other areas in which non-native species have taken root. Major wildlife networks exist, as do popular hiking trails. The range is also subject to catastrophic wildfires; the area is entirely within the Very High Fire Hazard Severity Zone, the most dangerous classification for wildfire safety purposes. Approximately half of

³ The real parties in interest in these proceedings are Lunch Properties LLLP (Lunch), Morleigh Properties, LLLP (Morleigh), Mulryan Properties, LLLP (Mulryan), Ronan Properties, LLLP (Ronan), Vera Properties, LLLP (Vera) and ED West Coast Properties, LLLP (ED).

⁴ We set out only those facts appropriate to the determination of this matter.

the mountainous region is held in state and federal parks and recreation areas.⁵ Its coastal beaches are known worldwide.

Development along the coast is intensive and extensive. Development inland is sparse. The six parcels of real property at issue in this litigation are located in a mountainous area on the southern flank of the range, about a mile inland from Pacific Coast Highway, east of Malibu Canyon Road and west of Las Flores Canyon Road. The Malibu Civic Center area, Malibu Pier, Malibu Creek, and Malibu Lagoon State Park are about a mile to the southwest. Totalling approximately 156 acres, the six parcels lie within a largely undisturbed block of wilderness (approximately 2,800 acres overall) that is characteristic of the range: steep, rugged mountain terrain blanketed by various natural rock outcroppings and primarily undisturbed native chaparral habitat.

The six parcels are situated along an approximately 3,000-foot stretch of a prominent ridgeline separating the Sweetwater Canyon and Carbon Canyon watersheds of the range. This ridgeline extends inland over two miles from the narrow coastal terrace traversed by Pacific Coast Highway to the backbone of the range; it varies in elevation from 600 to 1,050 feet above sea level. The ridgeline is visible from several significant public vantages along Pacific Coast Highway, including: Malibu Bluffs Park (two and a half miles west); Pacific Coast Highway and Malibu's Civic Center and Colony Plaza areas (two miles west);

⁵ These are the Santa Monica Mountains National Recreation Area, Topanga State Park, Malibu Creek State Park, Malibu Bluffs Park, Malibu Creek State Park, the Charmlee Wilderness Park. The privately held, Cold Creek Canyon Preserve, is also located in the range.

Malibu Lagoon State Park and Surfrider Beach areas (one and a half miles southwest); and Malibu Pier (one mile southwest). The ridgeline is also highly visible from Malibu Creek State Park, portions of Malibu Canyon Road, and the Saddle Peak Trail about a quarter mile to the west, portions of Piuma Road approximately a mile to the north, and several vista points along Rambla Pacifico Road a mile to the east. Views from the ridgeline are expansive. Because of its prominence, the ridgeline is designated a “Significant Ridgeline” in the Santa Monica Mountains Land Use Plan (SMMLUP, Map 3).⁶

The area is undeveloped and comprised of steep, rugged, mountain terrain blanketed by natural rock outcroppings and primarily undisturbed native chaparral habitat that is part of a large contiguous area of undisturbed native vegetation which has been designated as a SERA.⁷ A large area of public parkland within Malibu Creek State Park is adjacent to the west. The parcels at issue lie within the Santa Monica Mountains National Recreation Area and within the coastal zone.

The National Park Service’s Santa Monica Mountains National Area Land Protection Plan identifies the area at issue as within a “habitat linkage” connecting Malibu Creek State Park with Cold Creek Canyon Preserve and surroundings to the

⁶ The SMMLUP is an element of the Santa Monica Mountains Local Coastal Plan (SMMLCP).

⁷ The extant SMMLCP uses the term SERA in place of the term “environmentally sensitive habitat area” (ESHA), the latter being a term defined in Coastal Act, § 30107.5. The SMMLCP divides this sensitive habitat into categories to indicate the degree of protection to be afforded. (See, *post*, at pp. 12–13.)

northeast. A 2003 Memorandum to Commission's South Central Coast District staff issued in connection with Commission's staff report for the City of Malibu Local Coastal Program (MLCP), states: "Connectivity among habitats within an ecosystem and connectivity among ecosystems is very important for the preservation of species and ecosystem integrity. In a recent statewide report, the California Resources Agency identified wildlife corridors and habitat connectivity as the top conservation priority."

The MLCP had been adopted by the County of Los Angeles in 1986 pursuant to the Coastal Act, which authorized and encouraged local agencies to enact their own local coastal programs. These programs, comprised of a land use plan (LUP) and a set of implementing ordinances (a local implementation plan (LIP)), are designed to promote the Coastal Act's objectives of protecting land and resources in the coastal zone and of maximizing public access and views.⁸ (§§ 30001.5, 30251, 30512, 30513; *Landgate, Inc. v. California Coastal Com.* (1998) 17 Cal.4th 1006, 1011; *Paoli v. California Coastal Com.* (1986) 178 Cal.App.3d 544, 551–552.)

On November 22, 2005, five of the RPIs each purchased one of the parcels of real property at issue here. In 2007, these RPIs filed their original applications for CDPs with Commission, seeking permission to construct five single-family residences (each with a swimming pool and septic system), a road to gain

⁸ The MLCP, although certified by Commission in 1986, remained a guidance document only, with decisions on CDPs remaining with Commission as the necessary implementing regulations were never also certified by Commission. (See *Hagopian v. State of California* (2014) 223 Cal. App.4th 349, 368–369.)

access and a water line—the road and the water line to serve all five parcels. Commission deferred consideration of these applications because the proposed access road crossed several landslides and the geological conditions posed by its construction presented significant engineering challenges requiring additional study of the feasibility and safety of the proposed route. After additional geological and engineering studies, new CDP applications were filed, deemed complete, and set for hearing before Commission at its June 16, 2011 meeting.

As is its practice, Commission staff prepared a document known as a staff report for Commission members and the public which included a detailed description of the project and analysis and evaluation of it by staff, together with proposed findings and formal resolutions for consideration of, and adoption by, Commission. Exhibits to the staff report included reports prepared by staff and by applicants' consultants, maps of the area, pictorial representations of the construction proposed, and correspondence from other agencies and from members of the public expressing their views on the matter. An addendum to the staff report, filed just prior to the 2011 meeting, attached and discussed additional letters from the public and modifications to the findings proposed in the original staff report. The letters in favor of the development typically expressed support in general, without analysis of specific issues, as did many of those in opposition. Some of the letters in opposition contained specific objections based on environmental concerns. Among these were letters from the Supervising Regional Planner for the Los Angeles County Department of Regional Planning explaining ways in which the CDP applications would be inconsistent with policies set out in what was then Los Angeles County's Draft local

coastal plan (later the SMMLCP), and from the National Park System's Superintendent of the Santa Monica Mountains National Recreation Area, addressing what he detailed as the adverse effects which granting the CDP applications would have on the habitat, visual and recreational resources of the range.

The staff report enumerated many habitat, geological and engineering concerns, detailing, *inter alia*, substantial impacts to coastal resources, including to SERA, and to scenic and visual resources: "The proposed development would introduce the first homes and improved roads into an otherwise pristine 2,800 acre block of undisturbed habitat." The area in which the homes would be located was "subject to an extraordinary potential for damage or destruction from wildfire." And, the homes would not be located adjacent to existing housing in the area, as required by the Coastal Act.

The staff report also contained an extensive analysis of whether denial of the CDP applications would constitute a taking in violation of the Fifth Amendment to the United States Constitution, of Article I, section 19 of the California Constitution, and of a corollary statute, section 30010.

Commission denied the applications, finding "the proposed project will not be in conformity with the provisions of Chapter 3 [of the Coastal Act]. The proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. Therefore, the Commission finds that approval of the proposed development would prejudice the County of Los Angeles' ability to prepare a Local Coastal Program for this area consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a)."

Commission provided “guidance” to RPIs “as to what sort of development would be approvable.”

LITIGATION BY RPIs

Four RPIs (Lunch, Mulryan, Ronan and Vera) filed separate petitions in Los Angeles Superior Court for writs of mandamus seeking to vacate Commission’s denial of their respective applications for CDPs.⁹ During prehearing proceedings in that court the four litigating RPIs, Morleigh and Commission agreed to stay the litigation and “remand the [applications] to the Commission,” to allow amendment of the previously denied CDP applications and the filing of an amended CDP application by Morleigh. Each such application would propose a development to be located approximately as depicted on an exhibit to the settlement agreement. The settlement agreement provided for a stay of the litigation and for Commission to process the forthcoming CDP applications, “waiv[ing] the requirement for preliminary approval by other federal, state or local governmental agencies.” Commission also agreed to schedule a hearing on the revised applications as expeditiously as reasonably possible once the applications were completed. The agreement included a provision that “[n]othing in this agreement shall, in any way, limit the Commission’s exercise of its discretion when considering the [renewed applications]” and a provision that the four applicants which had filed the litigation retained the right to terminate the stay of the litigation in the event Commission denied filing of any of the applications or if it

⁹ RPI Morleigh had withdrawn its application prior to Commission voting on it. ED purchased a parcel and filed its first CDP application after Commission actions in 2011.

were to approve any of the revised applications on terms that were “not reasonably acceptable” to any applicant. With this stipulation, the trial court entered an order staying proceedings before it.

A. Renewed Applications and Commission Proceedings in 2015

RPIs prepared and submitted new applications for CDPs which were scheduled for consideration at the October 8, 2014 Commission meeting. They were not heard at that meeting due to a failure of Commission staff to give the notice required by California Code of Regulation, title 14, sections 13063 and 13054.

Because Commission certified the SMMLCP at this meeting and RPIs’ CDP applications needed to be rescheduled for consideration, RPIs were asked to review their applications and revise them as might be necessary to meet any appropriate changes based on Commission’s adoption of the SMMLCP.

RPIs’ revised CDP applications were heard at Commission’s May 2015 meeting.¹⁰ The staff report for these applications addressed the history of RPIs’ efforts to obtain CDPs, together with analysis of the elements of the current project proposal, its physical setting and the ecological, geological, visual and engineering issues presented by the applications. It noted the location proposed, along a prominent ridgeline, in a rugged, undeveloped area of steep topography, challenging geology, and of special biological significance. It also reported that “the project site is located in an area historically subject to significant natural hazard, including, but not limited

¹⁰ We omit detailed description of the project as discussed at the May 2015 Commission meeting as it is unnecessary to our decision.

to, landslides, erosion, flooding and wild fire. Specifically, the project site contains complex geology, soils, and significant geologic hazards, including landslides. In order to minimize fire hazards, the applicants have submitted a fire protection plan which includes measures to protect the subject development from wildfire; however[,] the Fire Department has not reviewed this Plan. . . . Special Condition Twenty (20) requires that the applicants submit a final fire protection plan that has been reviewed by the Fire Department.” Due to the circumstance that the structures will be built on areas of historic landslide activity, “Special Condition One (1) requires the applicants to comply with the recommendations contained in the applicable geotechnical reports.”

Staff explained that the SMMLUP defines SERAs as “areas containing habitats of the higher biological significance, rarity, and sensitivity.” “SERAs are further divided into two habitat categories: H1 Habitat and H2 habitat, depending on the characteristics of the underlying habitat. Both of these habitat types are considered to be ESHA under the Coastal Act. LUP Policy CO-33 and Section 22.44.1810(A) (of the [Local Implementation Plan (LIP)]” distinguish between these two categories and add a division within H2, that of H2-High Scrutiny Habitat and H-2 Habitat. (A third category of lesser priority, H-3 habitat, describes areas that would be H2 habitat except for the circumstances that that habitat has been significantly disturbed or removed.)

Among the SMMLCP policies listed in the staff report as relevant for Commission’s consideration was Policy CO-41 which states, “New non-resource dependent development shall be prohibited in H1 habitat areas to protect these most sensitive

environmental resource areas from disruption of habitat values. The only exception is that two uses may be approved in H1 habitat . . . in very limited circumstances as follows: (1) public works projects required to repair or protect existing public roads where there is no feasible alternative. . . ; and (2) an access road to a lawfully-permitted use outside H1 habitat when there is no other feasible alternative . . . as long as impact to H1 habitat are avoided [¶] The County shall not approve the development of any non-resource dependent use other than these two uses within H1 habitat, unless such use had first been considered in an LCP amendment that is certified by the Coastal Commission.”

The report noted the many differences in configuration of the project made following denial of the CDP applications in 2011, including clustering the five homes more closely “to take advantage of overlapping fire clearance zones[,] and sites them in the southern portion of the site, minimizes new roadway construction, thus concentrating development in the relatively flat 13-acre ‘mesa’ area.”

Members of the public wrote letters in support of and in opposition to the project. Environmental groups, including Sierra Club, wrote letters detailing reasons why the present applications were flawed; most stressed what in their view were failures to comply with the SMMLCP. In its written comments on the May 2015 CDP proposals, Sierra Club noted, *inter alia*, that the report “admits that the project will have un-mitigated impacts on the public view” and “create a visual blight,” would be developed in “pristine native chaparral [and other vegetation], and that the “development area is in a Very High Fire Hazard Severity Zone, with a history of serious fires. The configuration of the access road and steepness, will prove difficult for

emergency vehicles.” Its letter contained the observation that “expect[ing] fire fighters to travel a 3,674 ft. long road . . . is unrealistic and dangerous. . . .” This presents unacceptable risks to firefighters and residents.”

Supervisor Sheila Kuehl, the member of the Los Angeles County Board of Supervisors whose district includes the area, wrote that the project as proposed was “inconsistent with many policies of the SMMLCP. . . . Failure by the Coastal Commission to require full compliance with the principles and policies of the SMMLCP will create such a negative precedent it could potentially impact the County’s ability to implement the provisions of the SMMLCP in the future.” She attached a copy of a letter from the Director of Planning for the County of Los Angeles which detailed the project’s numerous inconsistencies with the SMMLCP and multiple objections to the project.

The Superintendent of the United States Department of the Interior, National Park Service, Santa Monica Mountains National Recreation Area, filed a five-page letter detailing Interior’s concerns over the May 2015 proposals. The Superintendent listed “habitat fragmentation,” “visual degradation of a currently uninterrupted ridgeline,” and “placement of large homes in a wildland area that burns frequently,” among those issues.

The applicants’ representative filed a multi-page, detailed response to comments made by opponents of the applications in which it disputed most of the objections raised, arguing, *inter alia*, that Commission was the ultimate arbiter of whether the proposed development was “consistent with the 2014 [SMM]LCP. The courts have held that the Commission is the ultimate authority regarding the meaning of the County’s LCP. (*Charles*

A. Pratt Construction Co., Inc. v. California Coastal Commission (2006) 162 Cal.App.4th 1068, 1071.)”

In the end, staff recommended Commission grant the versions of the CDP applications presented for its consideration at the May 2015 meeting because, notwithstanding the impacts on SERA and other environmental concerns, denial of these applications “is necessary to avoid a taking, and section 30010 of the Coastal Act therefore requires” approval.¹¹

B. Disposition at the May 2015 Meeting

Following comments by members of the public and a closed session of Commission (in which the stayed litigation was discussed), members of Commission discussed the applications at the resumed public session. Some commissioners suggested the project might be more acceptable if there were fewer residences; others suggested reducing the square footage of the residences. No motion was made to approve or disapprove the applications; instead, Commission members voted unanimously to continue the matter for further consideration by staff and RPIs.

¹¹ Section 30010 provides: “The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.”

C. December 2015 Commission Meeting

Following the May 2015 meeting, RPIs made additional revisions; the further revised CDP applications were placed on the agenda for the December 2015 Commission meeting. The staff report for this meeting advised that “staff and the applicants worked to analyze alternative siting and design configurations that would further minimize adverse impacts to coastal resources, including those to sensitive habitat areas, and more generally be consistent with the [SMM]LCP.” That work included an alternative for the siting of the five residences, denominated the staff alternative.

The revised applications for CDPs as preferred by RPIs and considered by Commission at this meeting again sought permits for five single family residences. The new CDP applications differed from those considered at the May 2015 meeting in several respects, including the following: The range of the sizes of the five residences changed, with the largest residence being reduced in size; the siting of the houses was more compact; the length of the access road increased from 1,980 to 2,180 linear feet; the new road alignment required additional grading, installation of 16 additional caissons and an additional 190-linear foot rock fall stabilization device; the water line was reduced by 800 linear feet.¹²

¹² The specifications for the CDPs considered at the December 2015 meeting were as follows: (1) five new single family residences ranging in size from 10,315 square feet to 11,189 square feet (including garages and non-habitable storage space) on five adjoining lots; (2) 27,570 cubic yards of grading (23,250 cubic yards of cut; 4,320 cubic yards of fill) for the five residence development areas and private driveways; (3) 25,520 cubic yards of grading (6,700 cubic yards cut and 19,450 cubic yards of fill) for the 2,180-linear foot long, 20-foot wide shared access road extending across

It was also noted that the City of Malibu continued to await completion of action by Commission before considering the application for CDP for its portion of the access road necessary to the project.

While the siting of residences in RPIs' December 2015 proposal was designed to avoid H1 habitat, staff reported, "However, the required fuel modification will extend into H1 habitat areas. . . . Given the topography of the sites, and the location of H1 habitat areas, geologic hazard areas, ridgeline, and steep slopes on the sites, there are no other feasible alternative building sites on the properties that can avoid the H1 buffer or quiet zone."¹³ Overall, the fuel modification requirements of

the project sites (connecting Sweetwater Mesa Road in Malibu by construction of a road segment which remained subject to consideration by the City Council of the City of Malibu); (4) 3,030 cubic yards of grading (40 cubic yards cut and 2,990 cubic yards fill) for fire department turnout along the shared access road; (5) 7,270 cubic yards of excavation required for structural piles for the five residences' foundations; (6) a 315-linear foot rock fall stabilization device along the shared access road and a 190-linear foot rock fall stabilization device on the Ronan residence site; (7) 7,000-linear foot long waterline extension to the sites from Costa Del Sol Road; (8) recordation of an open space conservation easement grant over 137 acres, including portions of the five construction sites, and of a grant deed for the dedication of a sixth, contiguous, approximately nine-acre parcel to Mountains Recreation Conservation Authority; (9) an offer to dedicate a trail easement for the Coastal Slope Trail which runs through the project area; (10) lot line adjustments; (11) implementation of a Habitat Mitigation and Monitoring Plan for an endangered species of vegetation (purple needlegrass) and restoration and revegetation of a dirt access road that had not been restored earlier; (12) implemental of construction traffic mitigation measures.

¹³ "H1 habitat consists of areas of highest biological significance, rarity, and sensitivity—alluvial scrub, coastal bluff scrub, dune, native

RPIs' December proposal were deemed to be significant, to have potentially significant impact on wildlife in the area and to violate SMMLCP Policy CO-56 which forbids thinning or removal of vegetation in H1 areas. However, staff also concluded in a finding adopted by the Commission that the exception allowing for fuel modification in H1 habitat applied. This exception provided that fuel modification was to be permitted in H1 habitat when "a development . . . is the minimum development necessary to provide a reasonable economic use of the property and where there is no feasible alternative, as long as impact to H1 habitat are avoided to the maximum extent feasible, and unavoidable impacts are minimized and mitigated. . . ." (Policy CO-56; LIP §§ 22.44.1810, 22.44.1190.)

Staff wrote that "[g]iven the topography of the sites, and the location of H1 habitat areas, geologic hazard areas, ridgeline, and steep slopes on the sites, . . . there are no other feasible alternative building sites on the properties that can avoid the H1 buffer or quiet zone." The Staff Report concluded its analysis of RPIs' December CDP applications with the determination that "the proposed structures have been sited to minimize their adverse impact on visual resources, and to minimize hazard from fires in "an area historically subject to significant natural

grassland and scrub with a strong component of native grasses or forbs, riparian, native oak, sycamore, walnut and bay woodlands, and rock outcrop habitat type. . . . [¶] H2 habitat consists of areas of high biological significance, rarity, and sensitivity that are important for ecological vitality and diversity of the Santa Monica Mountains Mediterranean Ecosystem." Quiet Zones are areas where development shall be prohibited to protect most sensitive environmental resource areas from disruption. (SMMLUP pp. 22—23.)

hazards including, but not limited to, landslides, erosion, flooding and wild fire.”

1. Written correspondence in the record for the December meeting

The written correspondence in support of the December 2015 CDP applications was again mostly general, with many of those writing in support indicating they were friendly with or knew two of the applicants. Others considered that RPIs had endured a long and arduous process and wished that, as now proposed, that process be concluded favorably to RPIs. A much larger number of letters and emails was received expressing opposition to the December 2015 CDP applications, including detailed statements in opposition from the Superintendent of the United States Department of the Interior National Park Service, Santa Monica Mountains National Recreation Area and the Chair of the California Senate Committee on Natural Resources and Water, who wrote in opposition, adopting the objections of the Santa Monica Mountains National Recreation Area Superintendent.

Prior to the Commission meeting, staff provided an “Addendum” to its staff report which included an analysis of the correspondence received and updated sections in its earlier staff report. With respect to the correspondence submitted in opposition, staff stated that, in its view those commenting erred in claiming the “proposed project is not consistent with the SMMLCP.” The addendum did not change the staff report conclusion that while RPIs’ CDP applications, as revised following the May 2015 Commission meeting, would still be inconsistent with the SMMLUP, “there is no way to avoid these impacts without substantially reducing the scale of the

development, such as by eliminating entire homes.” While staff “is not convinced that such a requirement would constitute a taking,” “in the context of the history of this project and recognizing a colorable argument that requiring a substantial reduction in the scale of this development could result in a taking under the *ad hoc Penn Central*¹⁴ standard discussed in the staff report, staff is recommending approval that is inconsistent with the LCP in this one narrow respect.”

Comparing RPIs’ December 2015 CDP applications with the “staff alternative,” staff concluded RPIs’ proposal was more protective of H1 habitat.

2. Commission approval of CDP applications at December 2015 meeting

Commission approved RPIs’ six applications for CDPs, determining both that there were significant adverse impacts on coastal resources and that denial of the project as reconfigured and then before Commission could constitute a taking of private property in violation of federal and state takings principles, stating “Commission is approving the proposed development to avoid interfering with the reasonable investment backed expectations of the [RPIs].”¹⁵

LITIGATION BY SIERRA CLUB

Sierra Club filed its verified petition for writ of mandate on January 21, 2016, seeking to set aside the approvals of all six of the CDP applications. Following briefing and argument on the petition, the trial court filed its statement of decision and entered

¹⁴ *Penn Central Transportation Co. v. New York* (1978) 483 U.S. 104.

¹⁵ Our disposition of this appeal does not constitute any comment on the substance of the determinations made by Commission.

judgment in favor of Commission and RPIs. Sierra Club filed a timely notice of appeal.¹⁶

DISCUSSION

Sierra Club contends the Staff Report, which Commission staff had prepared in advance of the December 2015 Commission meeting (a) to constitute the “functional equivalent” of an environmental impact report for the project pursuant to CEQA and its section 21080.5, as well as (b) to set forth the factual background and findings as the bases for Commission’s determination to issue the CDPs for the project pursuant to the Coastal Act, was “grossly inadequate” and, that, as a consequence, Commission failed to proceed in the manner required by law.¹⁷

Sierra Club also contends Commission abused its discretion in approving issuance of the CDPs because the project is inconsistent with the SMMLCP and as it violated provisions of the Coastal Act in making its determination to issue the requested CDPs. And, Sierra Club contends Commission erred in concluding denial of the project could constitute a taking prohibited by the federal and California constitutions, and by section 30010, and in concluding the CDPs must be granted to settle litigation between the parties.

¹⁶ Sierra Club filed a motion that we take judicial notice of the MLCP, the SMMLUP, excerpts of the SMMLIP and of the petition for writ of mandate it had filed in Los Angeles Superior Court. No opposition was filed. We granted those requests in 2018.

¹⁷ Section 21080.5 allows state agencies which have obtained certification from the Secretary of the Resources Agency to omit compliance with certain procedural steps in conducting environmental assessments of projects within their jurisdiction.

Commission and RPIs' contentions in opposition include that Commission complied with its obligations under CEQA and the Coastal Act as it was a "certified regulatory agency," pursuant to section 21080.5 and was "not required to assume "lead agency status and review impacts from the Project which were ' "not within its regulatory program.' "

In the course of our review of Commission's determination and of the administrative record, both of which we review de novo,¹⁸ we determined it appropriate to send the parties a letter raising certain issues and asked them to file letter briefs responding to the questions we posed, as authorized by Government Code section 60801. The first issue presented in our letter was the authority of Commission to continue to process RPIs' CDP applications following its certification of the SMMLCP on October 10, 2014. We noted for their consideration sections 30519 and 30604. The parties each filed an initial responsive letter, and responses to the initial letters of the other parties. We also discussed the matter with the parties at oral argument.

We asked that documents evidencing Commission's adoption of the SMMLCP be filed. In response to that request, Commission lodged copies of two documents evidencing its certification of the SMMLCP: the relevant excerpt of the agenda for the referenced meeting confirming adoption of the SMMLCP

¹⁸ In reviewing the decision of Commission, we make the same inquiry as did the trial court, examining the entire record and considering all relevant evidence, including evidence detracting from the agency's decision (*Bolsa Chica Land Trust v. Superior Court* (1999) 71 Cal.App.4th 493, 503), and exercising our independent judgment on pure questions of law, including the interpretation of statutes and judicial precedents (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 800–801; *Donaldson v. Department of Real Estate* (2005) 134 Cal.App.4th 948, 954).

at Commission’s October 10, 2014 meeting, and a letter from Commission to the County of Los Angeles Department of Regional Planning (County), dated October 13, 2014, advising County that all elements of the SMMLCP had been adopted and that authority to administer the SMMLCP had been delegated to County.¹⁹

Commission advised County as follows in that letter:

“Together, the approved Land Use Plan and the approved Local Implemental Plan constitute a complete Local Coastal Program (LCP) for the Santa Monica Mountains segment of the County’s coastal zone. [¶] . . . [¶] In accordance with California Code of Regulations, title 14, section 13544, I have made the determination that the County’s actions are legally adequate to satisfy the terms and requirements of the Commission’s certification and the Coastal Commission has concurred at its meeting of October 10, 2014. As such, the effective certification date of the [SMMLCP] is October 10, 2014, and *coastal development permit authority is delegated to the County of Los Angeles.*” (Italics added.)²⁰

¹⁹ We take judicial notice of these authenticated copies of official records of Commission pursuant to Evidence Code sections 452, subdivision (c) and 459, subdivision (a), noting that we previously gave notice that we might do so and that no party expressed any objection. (Evid. Code, § 455, subd. (a).)

²⁰ California Code of Regulations, title 14, section 13544 establishes the effective date for certification of local coastal plans. The letter from which the extract in the text is quoted establishes the effective date of the SMMLCP at October 10, 2014, the date Commission certified it.

The signature on the letter is that of the Commission Executive Director.

As resolution of this appeal requires that we determine the proper construction of certain statutes and regulations, we now set out the well-established rules we apply to make those determinations.

In determining the meaning of a statute or regulation, we look first to its text as that is generally the most reliable indicator of its intent. Only if the interpretive question presented is not then resolved, need we apply other rules of construction, including determining its legislative history and exploring maxims of construction. (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386–1387; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463, 1482; *Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1396–1397.) In appropriate cases, while we give weight to the administrative agency’s construction of the relevant statutes and to its interpretation of its regulations, we do not defer to the agency when the construction given by it is unauthorized, unreasonable or clearly erroneous. (*Haligowski v. Superior Court* (2011) 200 Cal.App.4th 983, 997–998.) Even in cases otherwise appropriate for our deference, we must keep in mind that interpretation of a statute or regulation presents a legal issue for which the court is the final authority. (*Yamaha Corp. of America v. State Board of Equalization* (1998) 19 Cal.4th 1, 12; *United Farm Workers of America v. Agricultural Labor Relations Board* (1995) 41 Cal.App.4th 303, 314–315.)

A. *The Absence of Effective “Government Approval”*

RPIs and Commission contended in their letter briefs and at oral argument that a Commission regulation, California Code of Regulations, title 14, section 13546, authorized it to continue to process and ultimately issue the CDP applications in this case

because they were pending at the time Commission certified the SMMLCP.²¹ While we acknowledge the lengthy history of RPIs' efforts to obtain CDPs, we cannot accept the arguments advanced by RPIs and Commission that the necessary condition precedent to reliance on this regulation—prior (and effective) government approval—was present.

California Code of Regulations, title 14, section 13546 provides in pertinent part: “At the time of delegation of coastal development permit authority there may be permit applications that have received local *government approval* and have not been voted upon by the Commission. The permit applicant may: (a) return the application to the local government for review under the certified [LCP] . . . ; or (b) proceed with Commission review for consistency with the certified [LCP].” (Italics added.)²²

²¹ Our review of the administrative record indicates that in the 2013 Settlement Agreement between Commission and RPIs, Commission agreed to “waive the requirement for preliminary approval by other federal, state or local agencies.” Notwithstanding this provision, Commission and RPIs responded to a question we presented in our Government Code letter to them regarding Commission’s authority to act following certification of the SMMLCP by contending that authority was based on local government approvals RPIs had received. The matter was explored with the parties at oral argument. For these reasons, we address it.

²² Section 22.44.910 of the Los Angeles County Local Implementation Plan (LIP), a component of the SMMLCP, contains a similar provision. Its subdivision F provides: “Any proposed development within the certified area which the County preliminarily approved (i.e., an “Approval in Concept”) before the effective date of the LCP and for which a complete application has been filed with the Coastal Commission may, at the option of the applicant, remain with the Coastal Commission for completion of review.”

They next argue RPIs had obtained government approval and thus properly elected to have Commission complete the processing of their CDP applications.

In support of this claim, RPIs contended at oral argument that the reference to “government approval” in California Code of Regulations, title 14, section 13546 refers to one or more of the approvals listed in California Code of Regulations, title 14, section 13052, specifically arguing RPIs had received approvals from County described in subsection (i) of the cited regulation. This subsection deems an applicant to have obtained the necessary local government approval when it has obtained “(i) Approval of general uses and intensity of use proposed for each part of the area covered by the application as permitted by the applicable local general plan, zoning requirements, height setback or other land use ordinances.”

RPIs rely for compliance with this government approval condition precedent on the approvals which they obtained in 2006 and 2007 for the site plans they filed in those years with County and which County then did approve in concept.²³ They argue

As we shall explain in the text, there is no factual basis upon which this section is applicable to the CDP applications at issue in this case. Reliance on this provision to validate Commission’s action in this case also would require that we ignore County’s several objections to the different iterations of RPIs’ CDP applications clearly indicating any local approval had been withdrawn.

²³ The administrative record contains a complete file for only one of the five approvals in concept, a single page of a second and three pages of a third. A November 2008 letter from County to Commission states that five approvals in concept had been obtained. RPIs and Commission rely on these approvals as well as references to them contained in Commission staff reports.

these “approvals in concept” applied to all subsequent iterations of their CDP applications regardless of the changes made to those applications and irrespective of the time elapsed since those original, conceptual approvals.²⁴ Commission made similar arguments, both in writing and orally.²⁵

The regulation upon which RPIs and Commission rely, California Code of Regulations, title 14, section 13052, does not sustain their contention. This regulation requires that the approval in concept be for the “uses and intensity of use” proposed “for each part” of the area covered by the application. While this requirement is modified by the word “general” (the full phrase is “general uses and intensity of use”), the changes made in the CDP applications in this case were so substantial—and the changes in the conception of the project were so great—that the 2006 and 2007 approvals in concept for prior iterations of the project must be deemed to have been vitiated by these changes.

RPIs’ own conduct supports our determination that the changes RPIs made in the project presented to and approved by Commission in 2015 required new approvals in concept.

For the purposes of this opinion we assume that the documentation for the four 2006 and 2007 approvals in concept for which the administrative record is incomplete was substantially similar to that for the approval for which there is a complete file in the record. Our disposition does not require specific comment on the missing sixth approval in concept.

²⁴ RPIs argue the terms “approval in concept” and “government approval” are equivalent. We do not disagree.

²⁵ We also observe that while the referenced “approvals in concept” are listed in an attachment to the staff report for the December 2015 Commission meeting, there is no discussion of them anywhere in the body of that report.

Inspection of the approval in concept documents in the record for the three parcels for which there is documentation establishes RPIs obtained multiple prior approvals in concept for two of these parcels and one additional approval in concept for the third. Thus, the very documents upon which RPIs rely indicate RPIs did not consider a single approval in concept to be valid indefinitely.

The substantial changes made in location and configuration of the residences to be constructed under RPIs' five principal CDP applications constitute an independent basis for our conclusion that new approvals in concept were required for valid reliance on this regulation. These changes included removal of three building sites and their relocation to new sites literally hundreds of feet across the landscape; a fourth building site was also moved, albeit a lesser distance. The design and configuration of each of these four residences (and the fifth) were also changed. The access road was relocated and the need for roadside fences to protect that road from falling rocks was increased twofold. These changes cumulatively resulted in substantially different "uses and intensity of use" "for each part" of the area covered by the applications. (See Cal. Code Regs., tit. 14, § 13052.)

In addition to these changes, there was a further material change that precludes application of the regulation upon which RPIs and Commission rely: the lot lines of four of the parcels were radically altered; thus, the concept of use for each lot was also materially changed.

Essential to the proposal and approval of the subject CDP applications was the severe redrawing of the individual lot lines to elongate and narrow each of two lots into new shapes to accommodate the movement of each associated building site, while retaining a tie to the original now distant lot border; two

other lots also changed dimension and one of them grew materially in size.²⁶ Thus, the uses and intensity of use of the original lot changed substantially for each of three (and on a lesser scale for the fourth) of the lots. No approvals in concept appear in the record for any of these totally reconfigured lots.

We acknowledge RPIs' argument that it is common for projects to change over time and that an original approval in concept can be sufficient to allow for consideration of a project that is revised over a period of time. While such an argument can be sufficient in the appropriate case, here it is inapplicable because of the extensive changes made in this project.

We also find that continued reliance on the contents of the letter issued by County in 2008 reciting the earlier approvals in concept to be inconsistent with—and abrogated by—County's later actions. Thus, in both 2010 and 2015 County filed written comments on the extant versions of the CDP applications; in each it set out several reasons why each of those CDP applications was "inconsistent with the principles and policies" of the draft of the SMMLCP. Thus, County made known its objections to RPIs' CDP applications, acts clearly expressing disagreement with the granting of those applications.

B. The Impact of Commission's Certification of the LIP

There is a further issue created by Commission in its certification of the SMMLCP, and in particular by its certification of the LIP: The LIP bars granting the lot line adjustments

²⁶ These reconfigurations appear to have been designed to maintain the individual owner's tie to its original lot, altering its geometry to accommodate the new location on which its residence would be built but maintaining a "foothold" upon which to predicate continued ownership.

integral to RPIs' CDP applications, thus vitiating any earlier government approval or approval in concept and vitiating Commission's ultimate approval of the CDP applications.

Commission has acknowledged, as it must, that in reviewing the CDP applications following certification of the SMMLCP, "the standard of review against which the Commission measured the [CDP] applications" was the SMMLCP. While Commission is correct that it is the SMMLCP which controls the grant or denial of CDP applications once the elements of the SMMLCP (LCP and LIP) were certified, Commission fails to appreciate the full extent of application of those documents, in particular the impact of the LIP on the lot line adjustments in this case.

Thus, in the course of its consideration of the subject CDP applications, Commission overlooked section 22.44.680 of the LIP. The introductory paragraph of this section explains that County shall only approve a change in lot lines "if substantial evidence demonstrates that the lot line adjustment meets the following requirements." One of the conditions to approval of a lot line alteration is set out in subsection D of this section which provides, "If H2 habitat area is present on any of the parcels involved in the lot line adjustment, the lot line adjustment may only be approved where it is demonstrated that the reconfigured parcels will not increase the amount of H2 habitat area that would be removed or modified by development on any of the parcels, including any necessary road extensions, driveways, and required fuel modification, from what would have been necessary

for development on the existing parcels.”²⁷ And subsection G of the same section contains a broader proscription on lot line adjustments, providing, “Minor lot line adjustments between existing lawfully-developed parcels may be authorized provided the adjustment would not adversely impact H1 habitat, H1 habitat buffer, H2 habitat, or scenic resources.”

The staff report contains no acknowledgement of these restrictions. While Commission recognized in the staff report and in its staff’s testimony at the hearing on these applications that the change in lot lines (which lines Commission adopted at the conclusion of the December 2015 hearing) would result in increased impact to H2 SERA, there was no recognition of the provisions of the LIP that apply to lot line adjustments.²⁸

²⁷ There is no dispute that H2 (as well as H1 and other) SERA are present in abundance on the several parcels which comprise the area at issue.

²⁸ The increased impact to H2 SERA discussed in the staff report and orally by staff at the December 2015 Commission meeting related to a comparison between H2 SERA impacts of RPIs’ proposal with those of a Commission staff alternative. Thus, in describing its recommendation to approve the CDP applications, staff wrote, “Given [specified LUP policies], staff believes that the applicants’ proposed alternative which avoids siting structures within H1 habitat most closely carries out the intent of the policies and provisions of the LCP even though it results in greater impacts to H2 habitat.”

The H2 SERA impact addressed in the LIP is different in scope; it is the increase in impact to H2 SERA that results specifically from changes in lot lines. The information on this increase in impact—of approximately 26,136 square feet—does not appear in the staff report, but does appear in the record.

Approval of these CDP applications was dependent upon the lot line adjustments forbidden by the LIP. In making its determination, Commission failed to consider the requirements of the LIP. Adoption of the LIP vitiated any possible government approval of a CDP application that required a lot line adjustment as contained in the 2015 iteration of RPIs' CDP applications. This is an additional basis upon which we conclude there was no effective government approval and thus no basis to apply California Code of Regulations, title 14, section 13546, in this case.

C. Allocation of Commission Jurisdiction

We now address a second aspect of the issue we raised in our letter to the parties, that of allocation of jurisdiction to consider CDP applications as between Commission and local jurisdictions once Commission certifies a LCP. In our Government Code letter, we cited sections 30519, subdivision (a) and 30604, subdivision (b). We asked the parties to address these statutes because they have particular relevance to our obligation in each case to consider whether the agency engaged in the administrative process in fact has jurisdiction over the subject matter it is adjudicating. We do so because jurisdiction cannot be created by consent, waiver, estoppel or fiat. (See *Norman I. Krug Real Estate Investments, Inc. v. Praszker* (1990) 220 Cal.App.3d 35, 47.) Such an inquiry presents a question of law for resolution by the court. (See *Harrington v. Superior Court* (1924) 194 Cal.185, 188; *Marlow v. Campbell* (1992) 7 Cal.App.4th 921, 928.) The obligation to address the issue is of such importance that we do so sua sponte. (E.g., *Jennings v. Marralle* (1994) 8 Cal.4th 121, 128; *Four Point Entertainment, Inc. v. New World Entertainment, Ltd.* (1997) 60 Cal.App.4th 79, 81, fn. 1; see

Wilson v. Southern California Edison Co. (2015) 234 Cal.App.4th 123, 143 [subject matter jurisdiction may be raised for the first time on appeal].) As we now explain, the Legislature allocated jurisdiction to consider CDP applications in the first instance based on whether a LCP had been certified.

Section 30519, subdivision (a) provides: “. . . after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30660) shall no longer be exercised by the commission over any new development proposed . . . and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.”²⁹

²⁹ At oral argument, RPIs argued that the term “new development” in section 30519, subdivision (a) “grandfathered” the CDP applications which they had filed, contending the development before Commission was not “new” because it was first proposed well prior to certification of the SMMMLCP; and, as it was not “new,” the statute did not apply.

RPIs’ argument ignores the fact that the CDP applications at issue were still proposals until issuance of the CDPs in December 2015, failing to consider the next word in the statute, i.e., “proposed.” Giving meaning to the full phrase thus includes changes in a “new development proposed” up to the time it is no longer “proposed” and is either granted a permit for construction or is constructed. Thus, any modifications to RPIs’ CDP applications up to the time a permit is granted are part of the “new development proposed.” Thus, the statute applies to RPIs’ CDP applications.

RPIs’ additional argument that we must recognize the trial court’s remand to Commission to consider amendments to the CDP applications rejected by Commission in 2011 is not relevant to the more fundamental issue whether Commission had jurisdiction once Commission certified the

A similar mandate is set out in section 30604, subdivision (b), which additionally indicates Commission’s jurisdiction after certification is appellate only. This section provides: “*After certification of the local coastal program*, a coastal development permit shall be issued if the issuing agency, *or the commission on appeal*, finds that the proposed development is in conformity with the certified local coastal plan.” (*Ibid.*, italics added.)³⁰

The words of sections 30519, subdivision (a) and of 30604, subdivision (b) are clear and unambiguous: Upon certification of the elements of a local coastal program, authority for issuance of coastal development permits no longer rests with Commission, but becomes the responsibility of the local agency, here, of County. The word used to convey this transfer of jurisdiction is mandatory: “shall.” No exception to this transfer of permitting jurisdiction appears in the cited statutes; nor does either statute suggest there is a gap in timing of the transfer once its condition precedent—Commission certification—is satisfied. Rather, whether read together or separately, the two statutes establish that upon certification of a local coastal plan, Commission’s jurisdiction is thereafter limited to consideration of appeals from determinations made by the local jurisdiction in applying the certified local coastal plan.

SMMLCP. The superior court’s remand does not overcome the critical defect in jurisdiction which we discuss in the text.

³⁰ The Legislature also provided for local administration of CDP applications prior to certification of the jurisdiction’s LCP under specific circumstances not present in this case. (See § 30600, subd. (b), sections cited therein, and § 30600.5.) These provisions reinforce the preference for local administration of LCPs discussed in the text following this footnote.

Commission itself recognized that certification of the SMMLCP brought about the transfer of jurisdiction to County to consider and determine the outcome of CDP applications, specifically stating that jurisdiction over RPIs' CDP applications was transferred. This is the clear meaning of Commission's letter to County, quoted, *ante*, in which Commission stated that "coastal development permit authority is delegated to the County of Los Angeles" effective on the date Commission certified the SMMLCP. (Italics added.)

Courts previously presented with this issue have held that the Coastal Act, of which these statutes are part, mandates immediate transfer of jurisdiction over local coastal plans upon certification. For example, in *Feduniak v. California Coastal Commission* (2007) 148 Cal.App.4th 1346, the Sixth District Court of Appeal explained the operation of section 30519 as follows: "Once the [local coastal plan] is certified, "the Commission's role in the permit process for coastal development [is] to hear appeals from decisions by [the local government] to grant or deny permits." (*Id.* at p. 1354, fn. 5; accord, *Security National Guaranty, Inc. v. California Coastal Commission* (2008) 159 Cal.App.4th 402, 421; see also *Del Mar v. California Coastal Commission* (1984) 152 Cal.App.3d 49, 52.)

Our supreme court explained the reasons for this forthwith transfer of jurisdiction in *Pacific Palisades Bowl Mobile Estates LLC v. City of Los Angeles* (2012) 55 Cal.4th 783 (*Pacific Palisades*), as follows: "The Coastal Act expressly recognizes the need to 'rely heavily' on local government '[t]o achieve maximum responsiveness to local conditions, accountability, and public accessibility. . . .' (Pub. Resources Code, § 30004, subd. (a).) As relevant here, "it requires local governments to develop local

coastal programs, comprised of a land use plan and a set of implementing ordinances designed to promote the act's objectives of protecting the coastline and its resources and of maximizing public access. [Citations.] *Once the California Coastal Commission certifies a local government's program, and all implementing actions become effective, the commission delegates authority over coastal development permits to the local government.*" (*Id.* at p. 794, italics added.)

This meaning of the operation of the cited statutes is fully consistent with their legislative history. Sections 30519, subdivision (a) and 30604, subdivision (b) were part of the original enactment of the Coastal Act in 1976 in Senate Bill No. 1277 (1975–1976 Reg. Sess.) (SB 1277); their text as relevant to the issues before us has not changed in the intervening 42 years. (Stats. 1976, ch. 1330, § 1.)³¹

The legislative history of enactment of these sections confirms our construction of these statutes. The Bill Analysis of SB 1277 by the Senate Committee on Natural Resources and Wildlife states, "After certification, coastal development permits are issued by local governments except that commission-issued permits are required for developments on tidelands, submerged lands, or public trust lands." (Sen. Com. on Natural Resources and Wildlife, Analysis of Sen. Bill No. 1277, p. 8.) The Enrolled Bill Report to the Governor by the Business and Transportation Agency contains the same analysis, focusing on the timing of the

³¹ When section 30519 was enacted the text which is now in its subdivision (a) was the first, but unlettered, paragraph of that statute. (Stats. 1976, ch. 1330, § 1, p. 5986.) We take judicial notice of the legislative history of these sections and of the Coastal Act. (Evid. Code, §§ 452, subd. (c), 459, subd. (a) and 455.)

transfer of jurisdiction: Thus, it describes the relevant provisions of SB 1277 as “provid[ing] for the transfer of permit authority for development from the Coastal Commission to the local authorities once the local program has been “certified.” (Enrolled Bill Report, Business and Transportation Agency, Aug. 25, 1978, p. 1; accord, Selected 1976 California Legislation: Environmental Protection, 8 Pacific L.J. 351, 361.)³²

The rationale for the Legislature’s preference for local review, approval and implementation of local coastal plans is expressed in the just-quoted analysis in *Pacific Palisades, supra*, 55 Cal.4th 783, which makes it clear the Legislature intended for local agencies to prepare and implement local coastal plans “[t]o achieve maximum responsiveness to local conditions, accountability, and public accessibility. . . .’ (Pub. Resources Code, § 30004, subd. (a).)” (*Id.* at p. 794.)

The foregoing establishes that Commission’s certification of the SMMLCP terminated its jurisdiction to consider and to approve of RPIs’ CDP applications. Commission therefore lacked jurisdiction to consider and issue the six CDP permits at issue in this case.

³² An enrolled bill report is instructive in ascertaining legislative intent. (*Elsner v. Uveges* (2005) 34 Cal.4th 915, 934 & fn. 19 [“we have routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent”]; *Lolley v. Campbell* (2002) 28 Cal.4th 367, 375–376; but see *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 41–42 [“enrolled bill reports cannot reflect the intent of the Legislature because they are prepared by the executive branch”].)

DISPOSITION

The judgment filed May 9, 2017 is reversed. We remand the matter to the superior court for it to vacate that judgment and to enter a peremptory writ of mandate ordering Commission to set aside its approval of the six CDP applications of RPIs which it granted on December 10, 2015, and to cease further proceedings on those applications in deference to its certification of the SMMLCP and the transfer thereby of jurisdiction over RPIs' CDP applications to the County of Los Angeles.

Sierra Club shall recover its costs on appeal.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

GOODMAN, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.